

3139

A BOARD OF HOSPITAL TRUSTEES MAY NOT GRANT HOSPITAL EMPLOYEES, WHO BECOME PATIENTS, A DISCOUNT—§339.06, R.C., OPINION 868, OAG, 1949, OPINION 1126, OAG, 1952.

SYLLABUS:

A board of county hospital, trustees may not, under Section 339.06, Revised Code, grant employees of the hospital who become patients in the hospital a discount on the charges made by such hospital for patients.

Columbus, Ohio, July 13, 1962

Honorable John G. Peterson, Prosecuting Attorney  
Green County, Ohio, 18 Allen Building, Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have received a request from the Administrator of Greene Memorial Hospital, which is a tax supported institution operated by Greene County, Ohio, for an opinion from your office.

“They have been informed by the State Examiner that employee discounts are illegal. Quoting from their letter, this is the problem: ‘On the average we would admit fifteen to twenty patients per year that are being carried as our employees that would be entitled to employee discounts. Our people have Blue Cross or other forms of commercial insurance, so with the exception of their room charge, everything will be covered by the

insurance carrier. In dollars and cents, we are speaking of an estimated One Thousand Four Hundred Forty dollars (\$1,440.00) per year. If the Attorney General maintains through his interpretation that this is against the Ohio law, our Board of Trustees will then have to consider authorizing a blanket increase of \$.05 per hour for all our employees. At this point we are considering an estimated Eighteen Thousand dollars (\$18,000.00) per year.

“Comparing the two available avenues with prime consideration of efficient control and expending of available funds, it is readily shown that the employees discount would be far less a cost than the blanket increase.”

Section 339.06, Revised Code, provides in pertinent part as follows:

“\* \* \* The board of county hospital trustees shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

“\* \* \*

\* \* \*

\* \* \*

“The board of county hospital trustees shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees as are necessary for the proper care, control, and management of such hospital and its patients, and the board of county hospital trustees shall fix their respective salaries and compensation. \* \* \*

“The board of county hospital trustees shall fix the compensation to be paid by or for all patients for all services and treatment rendered by the county hospital. It may provide for the free treatment in such hospital of soldiers, sailors, and marines of the county, under such conditions and regulations as it prescribes.

“\* \* \*

\* \* \*

\* \* \*”

Paragraph one of the syllabus in Opinion No. 868, Opinions of the Attorney General for 1949, page 515, reads as follows:

“1. The board of trustees of a county memorial hospital is not required by law to grant discounts to soldiers, sailors, and marines, but may, in the exercise of its discretion, do so.”

After quoting that part of Section 3137, General Code, now Section 339.06, Revised Code, concerning the charges to be paid by patients, the Attorney General in Opinion No. 868, *supra*, stated as follows:

“It must be observed that the statute requires the fixing of compensation for *all* patients by the board of trustees and that under certain conditions and regulations prescribed by the board, soldiers, sailors, and marines may be furnished free treatment.”

Without expressly saying so, the Attorney General in Opinion No. 868, *supra*, implies that only those persons mentioned in the statute (i.e. soldiers, sailors and marines) may be granted discounts. It should be noted, however, that the then Attorney General did not refer to that part of the statute giving the board of county hospital trustees the entire management and control of the hospital including the power to establish rules for its government and the admission of persons to the hospital.

In Opinion No. 1126, Opinions of the Attorney General for 1952, page 97, one of my predecessors in an opinion to one of your predecessors concerning the powers of this board of county hospital trustees stated as follows:

\* \* \*

\* \* \*

\* \* \*

“I am not unmindful of the general rule which limits the powers of public officers and boards created by statute quite strictly to the powers set forth in the statutes relative thereto and to those powers that are necessarily implied therefrom, but I also recognize the principle that where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be vested in such trustees, and that the statute cannot undertake to enumerate in detail every movement that they may make. In this case the statute not only gives the board of trustees ‘the entire management and control of the hospital,’ but gives it also the power to ‘establish such rules for the government thereof as it deems expedient.’

\* \* \*

\* \* \*

\* \* \*

My predecessor in Opinion No. 1126, *supra*, held in paragraphs two and three of the syllabus as follows:

“2. Such trustees, if they deem it necessary in securing properly qualified physicians, nurses and other employees required for the operation of the hospital, may pay from the funds appropriated for their use the cost of advertising for help and necessary traveling expenses incurred in interviewing prospective employees, whether such traveling is by the members of the board or their employes, or by persons invited by the board to come for interview.

"3. Such trustees may adopt a rule providing that in case the board desires to terminate the service of an employe in the unclassified service, it shall give him two weeks notice, and providing that in the event the board considers it necessary to dismiss such an employe peremptorily, it may do so and pay him two weeks salary in lieu of such notice.

While Opinion No. 1126, *supra*, is authority for a very liberal interpretation of the powers of the board of county hospital trustees, it is not dispositive of the question in the instant case.

The question in the instant case is whether the board of county hospital trustees may charge an employee of the hospital less for his room when he is a patient in the hospital than the board charges other patients for the same room. In other words, may the board grant employees a discount?

Employee discounts in private industry were at one time a mere gratuity which an employer might give or withhold as he saw fit. In recent times, however, employee discounts have become a "fringe benefit" in many businesses. A "fringe benefit" is defined in Merriam-Webster's New International Dictionary (3rd Ed.) as follows:

"An employment benefit (as a Pension, a paid holiday, or health insurance) granted by an employer that involves a money cost without affecting basic wage rates."

When a "fringe benefit" is written into the contract of employment, it is no longer a gratuity but is something that an employee receives as a matter of right. See *Hobbs v. Lewis*, 159 F. Supp. 282 (D.C.D.C. 1958).

Such fringe benefits as may exist in public employment, however, are governed by statute. For example: pensions, Section 145.01 et seq., Revised Code; paid holidays, Section 325.19, Revised Code; sick leave, Section 143.29, Revised Code. I have been unable to find any statutory authority for employee discounts.

I am aware that the board of county hospital trustees has authority to fix employees' salaries and compensation. I do not believe, however, that such authority includes the power to grant employee discounts. "To fix salaries" denotes a definite amount. Employee discounts, on the other hand, involve a money cost which will vary depending on how many employees use the discount and how often they use it. If the legislature wanted to authorize employee discounts, it could have done so as in the

case of other fringe benefits, or by mentioning employees along with soldiers, sailors, and marines in Section 339.06, *supra*.

It is my opinion, therefore, and you are accordingly advised that a board of county hospital trustees may not, under Section 339.06, Revised Code, grant employees of the hospital who become patients in the hospital a discount on the charges made by such hospital for patients.

Respectfully,  
MARK MCELROY  
Attorney General